

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ORA LEE DUNLAP</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 228,974
<b>THE BOEING COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>INSURANCE COMPANY</b>	)	
<b>STATE OF PENNSYLVANIA</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Jon L. Frobish wherein claimant was awarded temporary total disability compensation and medical treatment for an injury occurring on August 4, 1997. The Administrative Law Judge found that claimant had just cause for failing to report the accident within ten days.

**ISSUES**

Was notice timely given pursuant to K.S.A. 44-520 and, if not, was there just cause for claimant's failure to timely notify respondent of the accident.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Administrative Law Judge awarded claimant benefits in the form of temporary total disability compensation and medical treatment, past and future, for an injury to claimant's left knee occurring on August 4, 1997. The Administrative Law Judge in awarding claimant benefits found that claimant had just cause for failing to report the accident within 10 days.

Respondent contends claimant failed to advise her supervisor in a timely fashion of the accident. Notice did not occur until sometime in September 1997, after claimant had undergone several treatments with at least two different doctors and was being considered for surgery.

The Administrative Law Judge used August 4, 1997, as the date of accident in his Order. Claimant, when filing the E-1 Application for Hearing, alleged an accident date of August 4, 1997, and continuing up to and including August 29, 1997. At the preliminary hearing, claimant amended the date of accident to include a date through September 6, 1997, claimant's last day worked before she was taken off work by Dr. Roger Thomas, her family physician.

The Appeals Board finds implicit within the issue of notice is the issue of date of accident. It is acknowledged that claimant suffered a specific trauma on August 4, 1997, when she struck her left knee on an airplane frame. Claimant reported the incident to Dr. Carney, her chiropractor, to whom she had been going for some time for back problems. Claimant also reported the problem to Dr. Thomas and received two injections to the knee, the first on September 2 and the second on September 8, 1997. These injections provided temporary relief but did not resolve the problem. Claimant was then referred to Dr. Bradley W. Bruner of Advanced Orthopaedic Associates in Wichita, Kansas. Dr. Bruner ultimately performed an arthroscopy with a partial medial meniscectomy on claimant's left knee, after finding damage to the medial meniscus.

Dr. Bruner was asked whether claimant's injury was aggravated by her work, after the August date of accident. He opined in his letter of January 20, 1998, that after the injury of August 4, 1997, claimant continued stair climbing, squatting, and stooping, which did make the left knee meniscal tear more extensive. Claimant testified that her condition continued to worsen through her last day of work on September 6, 1997, and this worsening resulted from constantly being on steps and climbing on scaffolds and ladders, as was required by her job.

In his Order of February 17, 1998, the Administrative Law Judge found claimant suffered a date of accident of August 4, 1997. The Appeals Board finds the date of accident while beginning on August 4, 1997, continued through claimant's last day worked before surgery, September 6, 1997. The testimony of claimant coupled with the opinion of Dr. Bruner is sufficient to convince the Appeals Board that, while this injury started as a specific trauma, the ongoing work activities of claimant worsened the meniscal tear. The Appeals Board, therefore, finds claimant's date of accident to be September 6, 1997.

Claimant testified that she told her supervisor, Mr. Martin Nunnery, of the incident within a week to 10 days of the occurrence. She is unable to state with any degree of accuracy a date on which this conversation would have taken place. Mr. Nunnery contradicts claimant on this point. The Appeals Board finds claimant did not provide notice within 10 days of the August 4, 1997, injury.

However, as the Appeals Board has found claimant's date of accident to extend beyond August 4, 1997, the Appeals Board must consider whether claimant provided notice to respondent within 10 days of September 6, 1997. Mr. Nunnery acknowledges that claimant discussed the situation with him in September 1997 but cannot specify a date. The nearest he can estimate is sometime in the middle of September. Claimant, however, can state that she discussed the problem with Mr. Nunnery on September 8, 1997, and specifically recalls she discussed the fact that this injury was related to her work with respondent. Claimant remembers this conversation with Mr. Nunnery as it was on the same day as her second injection, September 8, 1997.

The Appeals Board finds that claimant discussed this situation with Mr. Nunnery, her supervisor, on September 8, 1997. Therefore, claimant did provide notice to the respondent of the accident within 10 days of the date of accident, September 6, 1997. The Appeals Board finds that the Order of the Administrative Law Judge granting temporary total disability compensation and medical treatment to claimant for the injury to her left knee should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated February 17, 1998, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1998.

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BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS  
Vaughn Burkholder, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director